



Legislative Council Staff

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Revised Fiscal Note

(replaces fiscal note dated March 16, 2021 )

Drafting Number: LLS 21-0497 Date: April 29, 2021
Prime Sponsors: Sen. Jaquez Lewis; Gonzales; Rep. Caraveo; Kennedy Bill Status: Senate Appropriations Fiscal Analyst: Max Nardo | 303-866-4776 Max.Nardo@state.co.us

Bill Topic: PRESCRIPTION DRUG AFFORDABILITY REVIEW BOARD

- Summary of Fiscal Impact: [X] State Revenue [X] State Expenditure [X] State Diversion [ ] TABOR Refund [X] Local Government [ ] Statutory Public Entity

The bill creates the Prescription Drug Affordability Review Board to collect prescription drug cost information from insurers and establish caps on drug costs. It impacts state and local government expenditures on an ongoing basis, and creates a General Fund diversion.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$680,771 to the Department of Regulatory Agencies.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the Senate Health and Human Services Committee.

Table 1 State Fiscal Impacts Under SB 21-075

Table with 4 columns: Category, Sub-category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Diversions (General Fund, Cash Funds, Net Diversion), and TABOR Refund.

## **Summary of Legislation**

The bill creates the Prescription Drug Affordability Review Board, charged with reviewing prescription drug affordability data and creating caps on drug costs. Beginning January 1, 2022, it is unlawful to purchase a prescription drug at a cost that exceeds the cap established by the board except for personal or familial use. The operations and duties of the board are described below, along with reporting and compliance responsibilities for health insurance carriers.

**Board operations.** The board consists of five members to be appointed by the Governor and confirmed by the Senate. Board members and potential board members are subject to conflict-of-interest provisions established in the bill. The board must meet at least every six weeks unless the chair deems it unnecessary. The board is authorized to hire contractors, promulgate rules, accept and spend donations, and is exempt from the state procurement code. The fourteen-member Prescription Drug Affordability Advisory Council is also established to provide stakeholder input to the board.

**Board duties.** The board is directed to do the following:

- collect and evaluate information on the cost of prescription drugs sold to Colorado consumers;
- perform affordability reviews;
- establish prescription drug upper payment limits, capped at 12 drugs in each of the first three years;
- make policy recommendations to the General Assembly to improve drug affordability; and
- report annually to the Governor and General Assembly on drug prices, board activity, and impacts to health care providers and pharmacies.

The bill specifies drug types and cost thresholds that trigger a board inquiry into whether an affordability review is required, as well as criteria for making that decision. In performing a review, the board is required to consider determinants of cost, availability of alternatives, and a variety of market characteristics listed in the bill, which may be further delineated in rule by the board. Methodology for establishing an upper payment limit must be defined in rule. Any savings generated for a health benefit plan by an upper payment limit must be used to reduce costs to consumers. A process for appeals and judicial review is established.

**Health insurance carrier reporting.** Beginning in 2022, applicable health insurance carriers and pharmacy benefit management firms must report prescription drug cost information to the Commissioner of Insurance in the Department of Regulatory Agencies (DORA). This information, which is detailed in the bill, includes volume, total cost, average cost, and year-over-year drug price increases. The commissioner must post information online and provide information to the board, subject to confidentiality provisions.

**Drug withdrawal.** A drug manufacturer that intends to withdraw a drug for which an upper payment limit has been established from sale or distribution in the state must provide notice as detailed in the bill. The board must adopt rules concerning consumer notification in these instances.

**Fines.** The Attorney General may fine a carrier up to \$1,000 for violating the upper payment limit. The commissioner may fine a manufacturer up to \$500,000 for failure to provide notice of the withdrawal of a drug.

**State Revenue**

The bill may increase General Fund revenue from fines issued in accordance with the bill; this revenue is subject to TABOR. The Division of Insurance (DOI), on behalf of the board, is authorized to accept and expend donations; Legislative Council Staff is unaware of any source of donations having been identified. Donation revenue is not subject to TABOR.

**State Diversions**

The bill diverts \$793,567 from the General Fund in FY 2021-22 and \$481,479 in FY 2022-23 and future years. This revenue diversion occurs because the bill increases costs in the DOI in DORA, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

**State Expenditures**

The bill increases state expenditures in DORA by about \$800,000 and 5.0 FTE in FY 2021-22 and \$500,000 and 4.0 FTE in future years, and may affect expenditures in other state agencies. DORA expenditures are from the Division of Insurance Cash Fund. These costs are shown on Table 2 and described below.

**Table 2  
 Expenditures Under SB 21-175**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Regulatory Agencies</b>		
Personal Services	\$200,297	\$200,297
Operating Expenses	\$4,050	\$4,050
Capital Outlay Costs	\$18,600	-
Consultant	\$75,000	
Legal Services	\$382,824	\$191,412
Centrally Appropriated Costs <sup>1</sup>	\$112,796	\$85,720
FTE – Personal Services	3.0 FTE	3.0 FTE
FTE – Legal Services	2.0 FTE	1.0 FTE
<b>Total</b>	<b>\$793,567</b>	<b>\$481,479</b>
<b>Total FTE</b>	<b>5.0 FTE</b>	<b>4.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Regulatory Agencies.** Support of the board is estimated to require 3.0 FTE in the DOI. One staff member will focus on data collection procedures and rulemaking, implementation, data organization, publication, and confidentiality considerations. One staff member will analyze drug cost data and support the board in developing methodology for and conducting affordability reviews. A third staff member will primarily support the board and advisory council with logistics, administration, and annual reporting. It is assumed the board will hire a consultant to assist with the development of methodology for establishing upper payment limits; this is estimated to require 300 hours at a rate of \$250 per hour on a one-time basis.

**Department of Law.** The bill requires the department to assign an assistant attorney general to the board to support rulemaking, establishment of upper payment limit methodologies and hearing processes, information-sharing agreements, and to respond to CORA requests. This work requires two staff members in the first year and one ongoing staff member in future years (3,600 hours and 1,800 hours, respectively) at the standard legal services rate of \$106.34 per hour.

**Drug purchases by state agencies.** If the board establishes upper payment limits on drugs purchased by state agencies, or by carriers providing state employee health insurance, these agencies may see a reduction in prescription drug-related expenditures. This impact cannot be estimated; any savings will accrue to agencies through the annual budget process.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$112,796 in FY 2021-22 and \$85,720 in FY 2022-23.

**TABOR refunds.** The bill may increase state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

## **Local Government**

As with the state government, if the board establishes upper payment limits on drugs purchased by local governments or their insurance carriers, expenditures may decrease.

## **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## **State Appropriations**

For FY 2021-22, the bill requires an appropriation of \$680,771 and 3.0 FTE to DORA from the Division of Insurance Cash Fund. Of this amount, \$382,824 is reappropriated to the Department of Law, with an additional 2.0 FTE.

**State and Local Government Contacts**

Connect For Health Colorado  
Public Health and Environment  
Health Care Policy and Financing  
Regulatory Agencies  
Personnel

Higher Education  
Information Technology  
Human Services  
Judicial  
Law